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SUBJECT: EMBASSY KUWAIT VALIDATION STUDY ON DOMESTIC SERVANTS

REF: 04 STATE 172283

1. (SBU) SUMMARY: Embassy Kuwait has completed a nonimmigrant visa validation study on domestic employee B1 visa recipients. The purpose of this study was to measure the overstay and non-return rates for B1 visa holders with Kuwaiti sponsors, as well as the B1 sponsors' compliance with U.S. labor regulations as required by the Fair Labor Standards Act. Results taken from interviews with the B1 holders themselves, their Kuwaiti sponsors, and Department of Homeland Security entry and exit records indicate an overstay rate of nearly 20 per cent among the B1 visa holders and nearly universal violations of U.S. labor standards by the Kuwaiti sponsors.

2. (SBU) WHY DO A VALIDATION STUDY ON MAIDS? As a class, B1 domestic employees are some of the least qualified NIV applicants at post. They are usually young, single, third country nationals who earn low wages and have little history of international travel. As economic migrants, maids have few compelling ties to Kuwait or their countries of origin and can be subject to difficult working conditions. Local newspapers often carry accounts of domestic employees victimized by physical and sexual abuse. Some opt to run away, often seeking shelter at their embassies. Domestic workers have limited protections under Kuwaiti law and the Kuwaiti labor law does not apply to domestic servants. According to press reports summarizing Kuwaiti immigration figures, approximately one in six people living in Kuwait is a domestic servant (400,000 of 2.645 million.)

3. (SBU) However, domestic servants are an integral part of the Kuwaiti household. Many Kuwaiti families employ at least one domestic servant, and Kuwaitis expect to be able to take their domestics with them when they travel. It is not uncommon for a Kuwaiti family to withdraw its visa applications for a summer trip to Disneyworld if the maid's application is denied. Kuwaitis take refusal of their maids' visa applications as a personal affront. This can be an even more contentious issue among high-ranking Kuwaitis, resulting in official inquiries by the Kuwaiti MFA. B1 domestic visa applications are among the most difficult and time-consuming NIV applications, especially during the summer travel season. The interview itself requires speaking with the maid and the sponsor, as well as reviewing the contract. Refusals usually result in angry sponsors who will spend several minutes arguing with consular staff at different windows. It is also common for sponsors to reapply for their refused maids several times over the course of the summer travel season.

4. (SBU) For NIV officers, most B1 applications present at least one of the two following ineligibilities:

a) most B1 applicants have a difficult time showing strong ties to a residence outside of the United States, leading to ineligibilities under INA 214(b); and

b) given the poor wage and labor conditions in Kuwait, many Kuwaiti sponsors fail to complete a contract in accordance with the Fair Labor Standards Act as required by 9 FAM 41.31. This also results in refusals under 214(b) or 221(g).

These ineligibilities are so prevalent among the B1 applicant population, that even when consular officers approve B1 applications here, there is a strong suspicion that the B1 holder may overstay her visa, and that they employer will not comply with the conditions of the labor contract. In order to test these suspicions, post decided to perform a visa validation study on B1 domestics that would measure B1 overstay rates and sponsor compliance with the required labor contract.

5. (U) METHODOLOGY: In all applicable areas, this study followed the methodological guidance suggested in 04 STATE 172283. Deviations from the prescribed methodology were primarily the result of this study's relatively small sample size and the utilization of all available cases over the

course of the sample period. With this guidance in mind, post set out to establish the overstay rates and contract compliance for third country national B1 visa recipients. The case parameters are as follows:

Target Range: One Calendar Year: 01 May 2003 - 31 April 2004 (187 approved cases). These dates were selected in order to give all visa recipients the opportunity to travel, and also as a further guarantor of objectivity; none of the issuing NIV officers during this period are still at post.

Number of visas issued per month per target period: Average 15.75

May 32
June 40
Jul 25
Aug 17
Sep 15
Oct 6
Nov 4
Dec 7
Jan 14
Feb 0
Mar 8
Apr 17

Maximum anticipated percentage of overstays: 10 percent of cases, or 19 total. (For the purpose of this study, overstays include visa non-returns as well. As it happened in the final results, there were very few overstays at all. Most B1 visa holders who overstay simply don't leave.)
Maximum anticipated percentage of contract compliance: 50 percent.

Proposed sample size per month: All approved cases

Random Starting Point: 01 May 2003

Sample intervals employed in sample selection: 1 (100 percent sample rate of all issued visas)

16. (U) Having established the above mentioned parameters for case selection, post created a plan for collecting results:

Pull applications of issued B1 applicants from post records.

Enter applicant data into an Excel spreadsheet, listing visa holders by name, nationality, date of birth, sex, visa number and issuance date. In order to test B1 sponsor compliance with U.S. labor regulations, post also added an additional column to record the visa holder's reported monthly salary in the United States.

Contact B1 holders by telephone to establish the following results: confirmed overstay, returned to host or other country, inconclusive results (and why), nonuse of visa, suspected fraud, and for those that did travel, monthly salary in the US.

Follow up: send spreadsheet to DHS for confirmation on visa holder travel records, including overstay and non-return.

17. (SBU) TESTING RESULTS: TRAVEL HISTORY AND OVERSTAY RATES BY TELEPHONIC INTERVIEW. In December 2004, post NIV FSN staff began calling B1 visa holders to obtain information on their travel and salary history in the United States. The NIV section chief monitored many of these phone calls. The most striking result of these conversations was the obvious unreliability of this method of research. In many of the telephone calls, Kuwaiti sponsors refused to allow their domestic employees to speak with the Embassy. In cases where the domestics could speak on the phone, their sponsors were often heard in the back ground, feeding the "correct" answer to the domestic, or ordering her not to answer certain questions. The fact that so many of these interviews were conducted under obvious coercion makes these initial results highly suspect. The fact that the answers themselves were unverifiable, in post's opinion, weakens the reliability of results obtained solely by telephonic inquiry to an even greater degree.

Results of "confirmed overstay," and "returned to host or other country" would be impossible to verify by telephone inquiry. Post found several cases where sponsors claimed their domestic employees had returned to their home country, or were no longer in their employ, when DHS records later showed the same individuals had actually never departed the US. Post also suspects that in some instances, employers forced other household staff to pose as the B1 visa holder during the Embassy's telephonic inquiry. Given the contentious sponsor responses to Embassy inquiries, the coercive environment under which many by visa holders did respond to inquiry, and the ultimate unverifiability of telephonic responses to Embassy inquiries, post would have to categorize so many of these inquiries as "inconclusive"

or "suspected fraud" so as to undermine the results of the entire study.

18. (SBU) TESTING RESULTS: TRAVEL HISTORY AND OVERSTAY RATES BY DHS RECORDS. Fortunately, the DHS district office in Rome was able to provide post with travel records for all 187 B1 visa holders in post's study. This is the cavalry coming to the rescue: the DHS records quite literally saved this study. For the reasons discussed above, the telephonic records were unreliable. The DHS travel records however provided hard evidence for the B1 holders' travel history and overstays, and when compared to the results of the telephonic inquiries, also showed a pattern of fraud and misrepresentation on the part of their Kuwaiti sponsors. Both sets of records, when used together, were actually quite useful. However, post is using the DHS records as the actual account of the B1 visa holder travel history. Upon receipt of these results, post counted raw and revised numbers for travel and overstay rates. Post also ran for overstay rates based on nationality, age and sex. The initial results for our 178 B1 issuances are listed below:

Confirmed Overstays: 25
Departed United States, or in Status: 135
Inconclusive / Did Not Use Visa: 48
Suspected Fraud: 12

19. (U) This is a modification of the response categories we originally intended to use as described in para. 4, though post feels these response parameters more accurately describe the results of our inquiries. A brief explanation of these response categories follows:

a) Confirmed overstays are all cases counted as "Confirmed Overstay" or "No Departure" in DHS records. There are a total of 25 cases in this category consisting of four (4) overstays, and twenty one (21) no departures.

b) Departed United States, or in status: DHS records indicate that these visa holders traveled to the United States and departed within the time allotted by DHS agents at the port of entry. The "return to Kuwait or other country" was dropped from this provision because: first, it is impossible to tell where the traveler returned to, and second, because for the purpose of this study, we are only concerned with their travel to the United States.

c) Inconclusive / Did Not Use Visa: DHS travel records showed "No Record" next to 48 listed B1 visa holders in our study. Discounting the possibility of widespread failure of DHS entry-exit tracking systems, we can only assume that these individuals never used their visas and did not travel to the United States. In any case, the results are inconclusive.

d) Suspected Fraud: These consist of twelve (12) cases where Kuwaiti sponsors indicated in telephonic interviews that the B1 domestic had returned to Kuwait or her home country, while DHS records later showed no departure from the United States.

110. (SBU) RAW OVERSTAY RATES: The final results based on DHS records indicate that there were 25 confirmed overstays out of 178 issued B1 visas, an overstay rate of 14 per cent. When we discard the 48 inconclusive cases and look only at overstay rates for confirmed travelers, we see 25 out of 130, and overstay rate of 19 per cent. This is significantly higher than the 10 per cent we anticipated before conducting the study.

111. (SBU) OVERSTAY RATES BY NATIONALITY, AGE AND SEX:

OVERSTAY NATIONALITIES. Post also broke down the travel and overstay rates by nationality, age and sex. Looking at the three largest applicant groups, Indians, Filipinas, and Sri Lankans, we see the following results. The attendant numbers respectively list number of visas issued, number of confirmed travelers, number of overstays, and overstay percentage for confirmed travelers:

Indian: 71-47-8: 17 per cent
Philippines: 64-51-8: 15 per cent
Sri Lankan: 20-13-4: 30 per cent

The overstay rates for Indians and Filipinas, while higher than the 10 per cent initially expected, is roughly in line with the overall numbers for post's B1 population during the sample period. The overstay rate for Sri Lankans, while considerably higher than the Indian and Filipina results, is taken from a small enough statistical sample (only 13 confirmed travelers) to discourage any broader conclusions.

OVERSTAY AGE: The study's greatest surprise came with the age of the confirmed overstays. While we expected most overstays to be in their early to mid twenties, the average age of overstaying B1's was actually closer to 40. Removing

one outlier who was born in 1937, the average date of birth for the overstaying B1's was 1965. There was no clear mode year of birth; two overstays were born in 1952 and 1965 each, with the remaining twenty samples evenly distributed between 1952 and 1979. The median year of birth for our overstay population was also 1965.

OVERSTAY SEX: All overstays were female. However with only eight males among the original 178 visas holders, we would want to see a larger male sample before drawing any conclusions about a female proclivity to overstay.

11. (SBU) TESTING RESULTS: B1 SPONSOR COMPLIANCE WITH THE FAIR LABOR STANDARDS ACT. 9 FAM 41.31 requires that foreign nationals sponsoring personal employees for B1 travel to the United States comply with the Fair Labor Standards Act with regard to payment of wages, overtime compensation and tax laws. The FAM also requires the sponsor to provide for the employee's transportation, food, accommodation, and medical treatment in the United States. Prior to visa issuance, the Embassy requires sponsors and their employees to sign a contract guaranteeing employee rights and privileges while working in the United States. This contract specifically describes minimum salary requirements regarding the prevailing wage in five major American cities, and advises sponsors that their employees are to keep their own passports with them at all times in the United States. Given the typical 80 hour work week performed by most domestics here, the Consular Section for the purpose of this study figures a salary of about 600 USD per month, in addition to all food, transportation and lodging costs, to be in keeping with the minimum requirements of U.S. labor regulations. Given the wide discrepancy between Kuwaiti and American labor standards (domestic employees earn an average salary of about 160 USD per month; sponsors keep their employees' passports; legal protections against physical and sexual abuse are inadequate), post was eager to follow up on Kuwaiti sponsor pledges to adhere to U.S. labor standards. The results of this inquiry were discouraging, and in and of themselves, may call for a re-evaluation of post policy on B1 visa applications.

12. (SBU) Post telephonic interviews in December 2004 showed that of the 102 respondents (either sponsors or the B1 domestic), 85 were paid less than 600 USD per month, the study's minimum standard for compliance with the Fair Labor Standards Act. For Kuwaiti sponsors, this translates into an 83 per cent rate for noncompliance with US labor regulations, significantly higher than the 50 per cent originally expected. Furthermore, given the difficulties described in paragraphs 5 and 6 in conducting these interviews, the threat of coercion under which the B1 holders themselves were obviously responding, and the evidence that a number sponsors were lying about their employees' illegal immigration to the United States, we suspect that sponsor noncompliance with prevailing wage laws in the United States is actually closer to 100 per cent.

13. (SBU) CONCLUSIONS: The results of this visa validation study support two conclusions: a) the overstay rate for B1 domestics issued at Kuwait and traveling to the United States is nearly 20 per cent, roughly one in five. b) Among Kuwaiti sponsors of B1 domestic laborers in the United States, there is nearly universal noncompliance with United States labor laws.

14. (SBU) RECOMMENDATIONS: In light of this new evidence, post intends to take a number of steps to decrease the non-return rate for B1 domestics, and to ensure compliance with U.S. labor standards while in the United States.

a) Post will create a "blacklist" of Kuwaiti sponsors whose previously sponsored domestic employees have violated their visa status, or who themselves have failed to comply with US labor regulations as stipulated in the agreement they signed prior to B1 visa issuance. This will be accomplished through the creation of a Word document maintained at post including the names of the Kuwaiti sponsors to be manually checked by an adjudicating consular officer at the time of a B1 application. Sponsors included on this list will be unable to sponsor future B1 visa applications.

b) When adjudicating B1 applications, post should consider revising standards for what constitutes compelling ties to overcome the presumption of immigrant intent. While our study did show that overstaying B1's tend to be around 40 years of age, neither nationality nor gender proved to be useful indicators in predicting immigrant intent. Post should return to the applications for the overstaying B1's and look for any other commonalities: travel history, salary, time with employer and family status are probably good places to start.

c) The most challenging repercussion of this study regards sponsor obligations to the employee's fair wage and working conditions. 9 FAM 41.31 N9.3-3 states that employers must

sign a contract guaranteeing B1 worker prevailing wages and accommodation. Applications which fail to complete this contract may be refused under Section 214(b) or 212(a)(4) of the INA. The results of this study clearly suggest that Kuwaiti sponsors routinely and almost universally complete this agreement in bad faith. Post has always suspected that these agreements are disregarded once the sponsor and employee arrive in the United States, but to continue issuing B1 visas in light of this study's evidence would be to turn a blind eye to serial violations of U.S. labor laws and FAM regulations. Conversely, refusing all B1 applications out of hand is hardly realistic either.

One possible solution might be to require salary statements and bank records from B1 applicants. As most domestic employees in Kuwait are paid irregularly and in cash, this would automatically remove most applications from consideration. Visa officers' experience on the line, however, indicates that there is a small subset of domestic employees here who are paid well and at regular intervals. These applicants are usually able to show some kind of record indicating regular payment of salary. They also tend to have several years service with their employers and a history of international travel. Unfortunately, such applicant's represent a very small portion of B1 applicants, probably around 5 per cent. Raising the standards to overcome immigrant intent to something closer to these levels, however, is probably the only way to decrease post's B1 overstay rate and to ensure cooperation with U.S. labor laws.

LeBaron